



Roberta Young

Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: 0
Division: MSD
Section: ADM

Approved - discuss with individual ways to include language in permit to negate it. I.O. not allowed

SUBJECT:

State Agency Coordination Program -

1990 rulemaking effort to establish DEQ's State Agency Coordination Plan

PURPOSE:

Under the Department of Land Conservation (DLCD) statutes and rules state agencies carry out activities affecting land the statewide goals and compatible plans. To fulfill these responsibilities directed to develop a State Agency adopt rules for implementation.

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item ___ for Current Meeting
 - Other: (specify)
- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment A
 - Rulemaking Statements Attachment B
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment D
- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment ___
- Approve Department Recommendation
 - Variance Request Attachment ___
 - Exception to Rule Attachment ___
 - Informational Report Attachment ___
 - Other: (specify) Attachment ___

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DESCRIPTION OF REQUESTED ACTION:

The proposed rules contain provisions within the following four program components:

1. Identification of rules, programs, actions affecting land use.
2. Procedures for assuring statewide goal consistency and acknowledged plan compatibility.
3. Cooperation with and technical assistance to local governments.
4. Coordination with federal and state agencies and special districts.

AUTHORITY/NEED FOR ACTION:

<input type="checkbox"/> Required by Statute: _____	Attachment _____
Enactment Date: _____	
<input checked="" type="checkbox"/> Statutory Authority: <u>ORS 197.180</u>	Attachment _____
<input checked="" type="checkbox"/> Pursuant to Rule: <u>OAR 660-340-30</u>	Attachment _____
<input type="checkbox"/> Pursuant to Federal Law/Rule: _____	Attachment _____
<input type="checkbox"/> Other: _____	Attachment _____
<input checked="" type="checkbox"/> Time Constraints: An adopted State Agency Coordination Program is scheduled to be submitted to the DLCD by September 1, 1990.	

DEVELOPMENTAL BACKGROUND:

<input type="checkbox"/> Advisory Committee Report/Recommendation	Attachment _____
<input checked="" type="checkbox"/> Hearing Officer's Report/Recommendations	Attachment <u>E</u>
<input checked="" type="checkbox"/> Response to Testimony/Comments	Attachment <u>F</u>
<input checked="" type="checkbox"/> Prior EQC Agenda Items: EQC staff briefing provided at January, 1989 work session; hearing authorization granted June 2, 1990.	Attachment _____
<input checked="" type="checkbox"/> Other Related Reports/Rules/Statutes: (Proposed State Agency Coordination Program Document)	Attachment <u>G</u>
<input type="checkbox"/> Supplemental Background Information	Attachment _____

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REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The rules contain procedures the Department of Environmental Quality (Department) will employ in carrying out its rules, programs and actions that affect land use which may require city, county and agency participation and cooperation. The procedures also require that specific information be provided to the Department by any party applying for permits or related Department approvals or actions.

The testimony from the public hearing is summarized in Attachment E.

PROGRAM CONSIDERATIONS:

The rule adoption will require a determination of necessary Department staff resources for implementation. Minimal staff resources are currently available for land use-related participation and assistance purposes. The Department will assess program needs and provide implementation within the capabilities of Department resources. The Executive Summary, Attachment G, pages i - viii, highlights the key elements of the program and includes a list of Department actions determined to affect land use. Section III, pages 22 - 45, provides a description of the land use programs and procedures to assure land use compatibility.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None. The adoption and implementation of the State Agency Coordination Program is required by state law.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the EQC adopt the proposed rules. The Department staff has worked closely with the Department of Land Conservation and Development staff and has satisfactorily addressed their concerns and comments.

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CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE
POLICY:

The proposed State Agency Coordination Program document and rules represent an update of existing Department policy regarding the fulfillment of statutory land use responsibilities. The Department's current State Agency Coordination Program was certified by the Land Conservation and Development Commission in 1983. The program is consistent with Goal 2 of the Strategic Plan: "Aggressively identify threats to public health or the environment and take steps to prevent problems which may be created."

ISSUES FOR COMMISSION TO RESOLVE:

Commission evaluation, revision or concurrence is necessary for the four components of the State Agency Coordination Program as identified under Description of Requested Action on page 2 of this report.

INTENDED FOLLOWUP ACTIONS:

The Department will submit the State Agency Coordination Program and Rules for the Land Conservation and Development Commission's review and approval which is scheduled for December, 1990.

Approved:

Section:

Division:

Director:

Roberta Young
Peter A. Dalko
Jul Hanna

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: 7-24-90

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 18 - DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE AGENCY COORDINATION PROGRAM

PURPOSE

340-18-000 In accordance with ORS 197.180, this rule establishes Department policy and procedures to assure that Department activities determined to significantly affect land use are carried out in a manner that complies with the statewide land use goals and are compatible with acknowledged comprehensive plans. ~~[Notwithstanding possible land use effects, the Department is not responsible for local plan compatibility or goal compliance if the applicable statutory authority requires that the Department's actions be based exclusively on consideration of public health and safety].~~ There are limited situations such as those related to the Health Abatement Act and Threat to Drinking Water Act where the applicable statutes obligate the Department to make decisions based exclusively on environmental, public health and safety considerations, and nothing in this program is intended to affect these responsibilities. Division 18 shall control over any inconsistent rule provisions relating to land use compliance and compatibility in OAR 340 Divisions 20, 35, 52, 61, 71, and 120.

POLICY

340-18-010 It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.

DEFINITIONS

- 340-18-020 As used in these rules,
- (1) "Acknowledged comprehensive plan" means a city or county comprehensive land use plan that has been approved by the Land Conservation and Development Commission.
 - (2) "Affected local government" means a city or county government that has land use planning jurisdiction.
 - (3) "Commission" means the Environmental Quality Commission.

(4) "Department" means the Department of Environmental Quality.

(5) "Director" means the Director of the Department of Environmental Quality.

(6) "DLCD" means the Department of Land Conservation and Development.

(7) "Land use action" means a Department rule, program or activity which has been determined to affect land use as defined by OAR 660-30-005.

(8) "Land use dispute" means a difference of opinion between the Department and local government as to the compatibility of a Department land use action with the provisions of an acknowledged comprehensive plan.

(9) "Local government" means an incorporated city or county

(10) "LUBA" means the Land Use Board of Appeals.

(11) "LUCS" means a land use compatibility statement.

(12) "NPDES" means a wastewater discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System.

(13) "SAC Program document" means the Department's State Agency Coordination Program document developed pursuant to ORS 197.180.

(14) "Statewide goals" means Oregon's Statewide Planning Goals adopted by the Land Conservation and Development Commission pursuant to ORS 197.222.

(15) "TMDL" means Total Maximum Daily Load, the sum of a wasteload allocation for point and nonpoint sources.

(16) "WPCF" means a state Water Pollution Control Facilities Permit.

APPLICABILITY

340-18-030 The provisions of this rule, 340-18-000 through 340-18-200 apply to Department programs and actions subsequently determined to have significant effects on land use pursuant to ORS 197.180 and OAR 660-30-075. Department land use actions are identified below:

(1) Air Quality Division

(a) Approval of Noise Impact Boundaries for Motor Racing Facilities,

(b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries,

(c) Approval of Notice of Construction,

(d) Issuance of Air Contaminant Discharge Permit,

- (e) ~~[Approval]~~ Issuance of Indirect Source Construction Permit,
 - (f) Approval of Parking and Traffic Circulation Plan,
- and .

- ~~[(g) Application of State Implementation Plan,]~~
- (2) Environmental Cleanup Division
 - (a) Issuance of Environmental Hazard Notice.
- (3) Hazardous and Solid Waste Division
 - (a) Issuance of Solid Waste Disposal Permit,
 - (b) Issuance of Waste Tire Storage Permit, and
 - (c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit.
- (4) Management Services Division
 - (a) Approval of Pollution Control Bond Fund Application.
- (5) Water Quality Division
 - (a) Approval of Wastewater System and Facility Plans,
 - (b) Approval of Construction Grant Program Application,
 - (c) Approval of State Revolving Loan Application,
 - (d) Issuance of On-site Sewer Permit,
 - (e) Issuance of NPDES and WPCF Permits,
 - (f) Development of Water Quality Wetland Protection Criteria,
- (g) Requirement of an Implementation Plan to Meet ~~[R]~~ restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS),
- (h) Certification of Water Quality Standards for Federal ~~[Projects]~~ Permits, Licenses,
- (i) ~~[Declaration]~~ Development of Action Plan for declared ~~[of]~~ Ground Water Management Area,
- (j) Development of Nonpoint Source Management Plan,
- (k) Development of Estuary Plans,
- (l) Development of Oil Spill Regulations,

COMPLIANCE WITH STATEWIDE PLANNING GOALS

340-18-040 (1) The Department shall to the ~~[fullest degree possible]~~ extent required by law, achieve goal compliance for land use programs and actions identified in OAR 340-18-030 by assuring compatibility with acknowledged comprehensive plans, except as provided in Section 3.

(2) The Department shall consider a land use action to be in compliance with the goals when the action is determined compatible with the comprehensive plan.

(3) The Department shall assure statewide goal compliance when necessary through the adoption of findings

pursuant to OAR 660-30-065 (3) through the following process:

- (a) The identification of applicable goals;
- (b) Request for advice from DLCD or the Attorney General's office when necessary;
- (c) Consultation with the affected local government; and
- (d) The adoption of necessary findings.

(4) Department statutory responsibilities under ORS 222.840, the Health Abatement Law, are exempt from compliance with the statewide goals and compatibility with local comprehensive plans.

COMPATIBILITY WITH ACKNOWLEDGED COMPREHENSIVE PLANS

340-18-050 (1) Commission or Department actions under OAR 340-18-030 shall be compatible with local government acknowledged comprehensive plans to the ~~fullest degree possible~~ extent required by law.

(2) The Department shall rely on the compatibility procedures described in Section III - subsection 3, and Section IV - subsections 2, 3, and 4 of the SAC Program document to assure compatibility with an acknowledged comprehensive plan, which include but may not be limited to the procedures described below:

(a) An applicant's submittal of a LUCS which provides the affected local government's determination of compatibility.

(A) A LUCS shall be submitted with a Department application or required submittal information.

(B) The Department shall rely on an affirmative LUCS as a determination of compatibility with the acknowledged comprehensive plan unless otherwise obligated by statute.

(C) If the Department concludes a local government LUCS review and determination may not be legally sufficient, the Department may deny the permit application and provide notice to the applicant. In the alternative, when the applicant and local government express a willingness to reconsider the land use determination, the Department may hold the permit application in abeyance until the reconsideration is made ~~{does not consider all relevant land use issues, the Department may require the applicant to provide a local government re-evaluation of the LUCS or other related appropriate action}~~.

(D) If the Department receives a LUCS which states that the proposed action is incompatible with the acknowledged comprehensive plan, the Department shall notify the applicant that the application cannot be processed.

(E) A local government may withdraw or modify its compatibility determination any time prior to the issuance of a permit.

(F) [(E)] If more than one local government has jurisdiction related to a Department action, a LUCS review will be required from each affected local government.

reletter
~~[(F) If a local government land use compatibility determination or underlying land use decision is appealed subsequent to the Department's receipt of the LUCS, the Department shall continue to process the action unless ordered otherwise by LUBA or a court of law stays or invalidates a local action.]~~

remove LUCS

(G) If a LUCS ^{modification - land use decision} is successfully appealed after the Department has issued a permit, the Department may either proceed to revoke or suspend the permit or may decide to wait until the land use appeals process is exhausted.

(b) An applicant's submittal of a LUCS is required for the renewal or modification of the permits identified in 340-18-030 if the Department determines the permit involves a substantial modification or intensification of the permitted activity.

(A) Renewal permits require a LUCS if a permit renewal involves a modification that requires a LUCS under (B) of this section.

(B) Modification permits require a LUCS if:

(i) The permitted source or activity relates to the use of additional property or a physical expansion on the existing property. The LUCS applies to ~~the~~ physical changes on the property ~~and does~~ not ~~apply~~ to existing permit conditions,

(ii) The permitted source or activity involves a significant increase in discharge to state waters or into the ground,

(iii) The permitted source or activity involves the relocation of an outfall outside of the source property.

(iv) For a major modification of an air contaminant discharge permit which means any physical change or change of operation of a source that results in a net significant emission rate increase as defined in OAR 340-20-225 (25).

(c) An applicant's submittal of evidence that a ~~required~~ Department action has been ~~conducted with and is~~ reviewed by the affected local government and determined compatible with the local comprehensive plan.

(d) The Department provides notice to local government

prior to initiating land use planning actions of statewide application, or notice to affected local governments prior to initiating an action of site-specific or area-wide application. Dispute resolution procedures pursuant to OAR 340-18-060 are applied when the Department and local government disagree on plan compatibility.

(e) The Department provides notice to the affected local government of a Department land use action, which may include a request for local government action to assure local plan compatibility with the Department's action.

LAND USE DISPUTE RESOLUTION

340-18-060 The Department's preference for resolving a dispute over land use compatibility is to work directly with local government until resolution is accomplished. In resolving a land use dispute, the Department shall consider one or more of the following mechanisms:

- (1) Initiate meetings between the Department and affected local government to pursue resolution alternatives,
- (2) Provide an application for a necessary local land use approval,
- (3) Initiate an appeal of the local government's denial of land use approval,
- (4) Submit a request for local land use approval at the local government's periodic review of its comprehensive plan,
- (5) Request informal LCDC mediation in accord with OAR 660-30-070, and
- (6) Proceed with an agency action and provide compliance with the statewide goals in accord with OAR 660-30-065 (3).

STATEWIDE GOAL COMPLIANCE AND ACKNOWLEDGED PLAN COMPATIBILITY FOR NEW OR AMENDED RULES AND PROGRAMS SIGNIFICANTLY AFFECTING LAND USE.

340-18-070 (1) New or amended rules and programs shall be evaluated in terms of compliance with ORS 197.180 and OAR Chapter 660, Division 30, with the exception of temporary rules.

(2) The Department shall determine if new or amended rules and programs affect land use pursuant to OAR 660-30-075 (2) and Section III, subsection 2 of the Department's State Agency Coordination Program document.

(3) Notice of new or amended rules and programs that

affect land use shall be provided to DLCD and the land use mailing list and shall include the following information:

- (a) Evidence that the rule or program is a land use program; or,
- (b) Evidence that the rule or program affects land use and is covered under the Department's certified State Agency Coordination Program; or
- (c) Evidence that the rule or program is a land use program including an explanation of how goal compliance and plan compatibility will be assured.

COMPLIANCE WITH DLCD PERMIT COMPLIANCE AND COMPATIBILITY RULE

340-18-080 The Department's Waste Tire Storage Permit is classified a Class B permit pursuant to OAR 660 Division 31. This permit is subject to the procedures of OAR 340-18-040 and OAR 340-18-050 to assure statewide goal compliance and acknowledged plan compatibility.

COORDINATION WITH AFFECTED STATE AND FEDERAL AGENCIES AND SPECIAL DISTRICTS

340-18-090 The Department shall coordinate with the appropriate federal agencies and special districts on all rules and programs affecting land use as described in OAR 340-18-030.

COOPERATION WITH AND TECHNICAL ASSISTANCE TO LOCAL GOVERNMENT

340-18-200 The Department is committed to cooperate with and provide local government with environmental quality technical assistance and data for local government land use planning purposes within Department funding and staffing capabilities.

(1) Cooperation and technical assistance may include but not be limited to the following:

- (a) The provision of notice to local government of proposed rules and programs determined to affect land use.
- (b) Participation in the periodic review, plan update or plan amendment process.
- (c) The provision of environmental technical or scientific interpretative assistance and data.

(2) The Department's Intergovernmental Coordination Office is the initial contact point for local government. Department cooperation and assistance will be coordinated and

provided as appropriate by the Department's division and region offices.

(3) The provisions and referenced provisions of this section shall apply to all local governments including those local governments recognized under the state's Coastal Zone Management Program.

RULEMAKING STATEMENTS

Statement of Need for Rulemaking.

Pursuant to ORS 183.335(7) this statement provides information on the Environmental Quality Commission intended action to adopt rules.

(1) Legal Authority.

Adoption of rules on state agency coordination is consistent with enabling legislation, ORS 197.180.

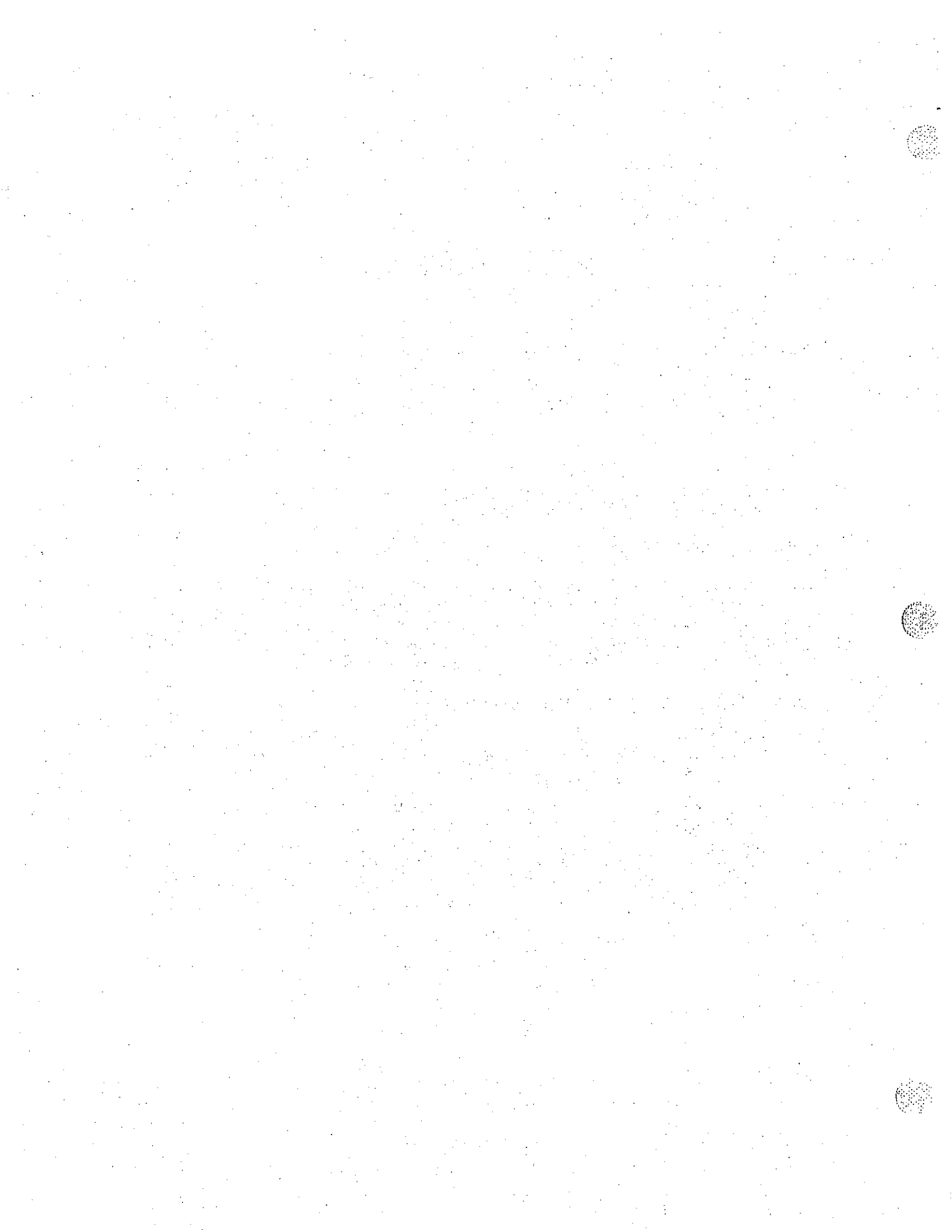
(2) Need for Rulemaking.

The Department of Land Conservation and Development Administrative Rule OAR 660-340-30 requires that state agencies adopt rules to implement procedures for assuring the agency's compatibility with acknowledged plans and procedures for the resolution of land use-related disputes.

(3) Principal Documents Relied upon:

- ORS 197.180
- OAR 660, Division 30
- Proposed DEQ State Agency Coordination Document

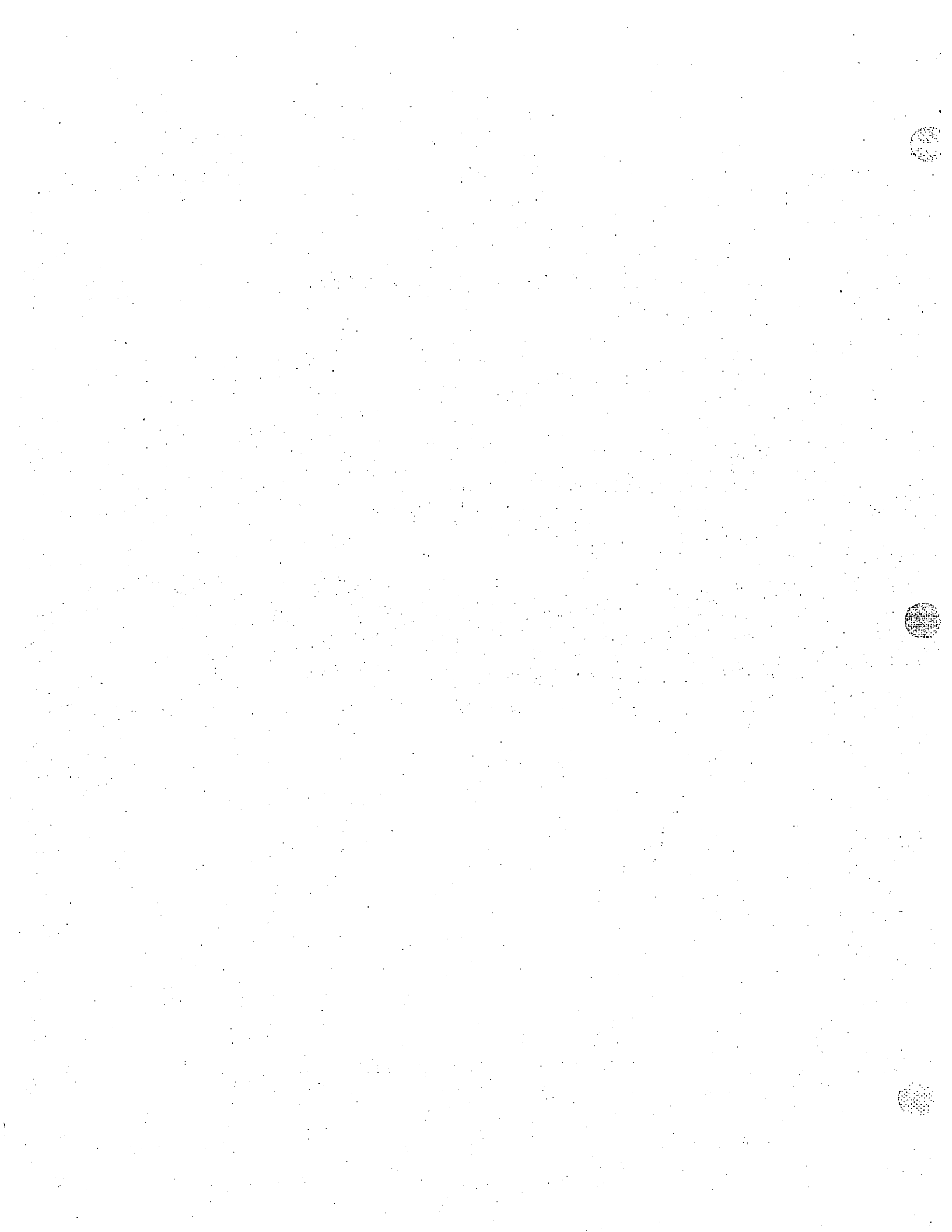
(4) The adoption of rules to direct the implementation of the Department's State Agency Coordination responsibilities is consistent with the Statement's Planning Goals, in specific, Goal 2, which states "is expected that required state and federal agency plans will conform to the comprehensive plans of cities and counties."



FISCAL AND ECONOMIC IMPACT STATEMENT

1. The update and rule adoption of the Department's State Agency Coordination Program does not anticipate increased staff resources in the current biennium.
2. The update and adoption of the Department's State Agency Coordination Program may result in an increase in requests by cities and counties for information and technical assistance. There may be a need for additional staff resources to carry out the responsibilities of the program for the 1991-93 biennium.

The proposed rulemaking is expected to present no measurable economic impact on the general public, small businesses or large business or cities and counties. The Department procedures for assuring its actions affecting land use are consistent with the statewide goals and acknowledged plans, are primarily an extension and update of existing procedure and policy.



A CHANCE TO COMMENT ON . . .

STATE AGENCY COORDINATION PROGRAM RULE PUBLIC HEARING

Date Prepared: June 13, 1990
Hearing Date: July 17, 1990
Comments Due: July 18, 1990

WHO IS AFFECTED:

Adoption by rule of the Department's State Agency Coordination Program update will continue to affect those individuals applying for permits and approvals of actions that affect land use.

WHAT IS PROPOSED:

The DEQ proposes to adopt rules OAR 340-18-000 through 340-18-200 to comply with ORS 197.180 and the Department of Land Conservation and Development Administration Rule OAR 660 Division 30.

Proposed rules direct the DEQ to carry out its state agency coordination land use responsibilities pursuant to the State Agency Coordination Program document.

WHAT ARE THE HIGHLIGHTS:

The proposed rules contain the following State Agency Coordination Program elements:

1. Identification of Department rules, programs and actions affecting land use.
2. Procedures to assure statewide goal consistency and compatibility with acknowledged plans.
3. Provisions for cooperation and technical assistance to local government.
4. Provisions for coordination with federal and other state agencies and special districts.



HOW TO COMMENT:

A public hearing will be held:

Tuesday, July 17, 1990
1:30 p.m.
DEQ Headquarters Bldg.
Room 10A
811 S.W. Sixth Ave.
Portland, Oregon

Written or oral comments may be presented at the hearing. Written comments may be sent to:

Department of Environmental Quality
Management Services Division
811 S.W. 6th Ave.
Portland, Oregon 97204

Written comments must be received no later than 5:00 p.m., July 18, 1990.

Copies of the proposed rules and program document can be obtained from:

Christie Nuttall
Management Services Division
811 S.W. Sixth Ave.
Portland, Oregon 97204
Telephone: 229-6484
Toll-free 1-800-452-4011

ATTACHMENT E
Agenda Item Q
August 10, 1990
EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: July 23, 1990

TO: Environmental Quality Commission

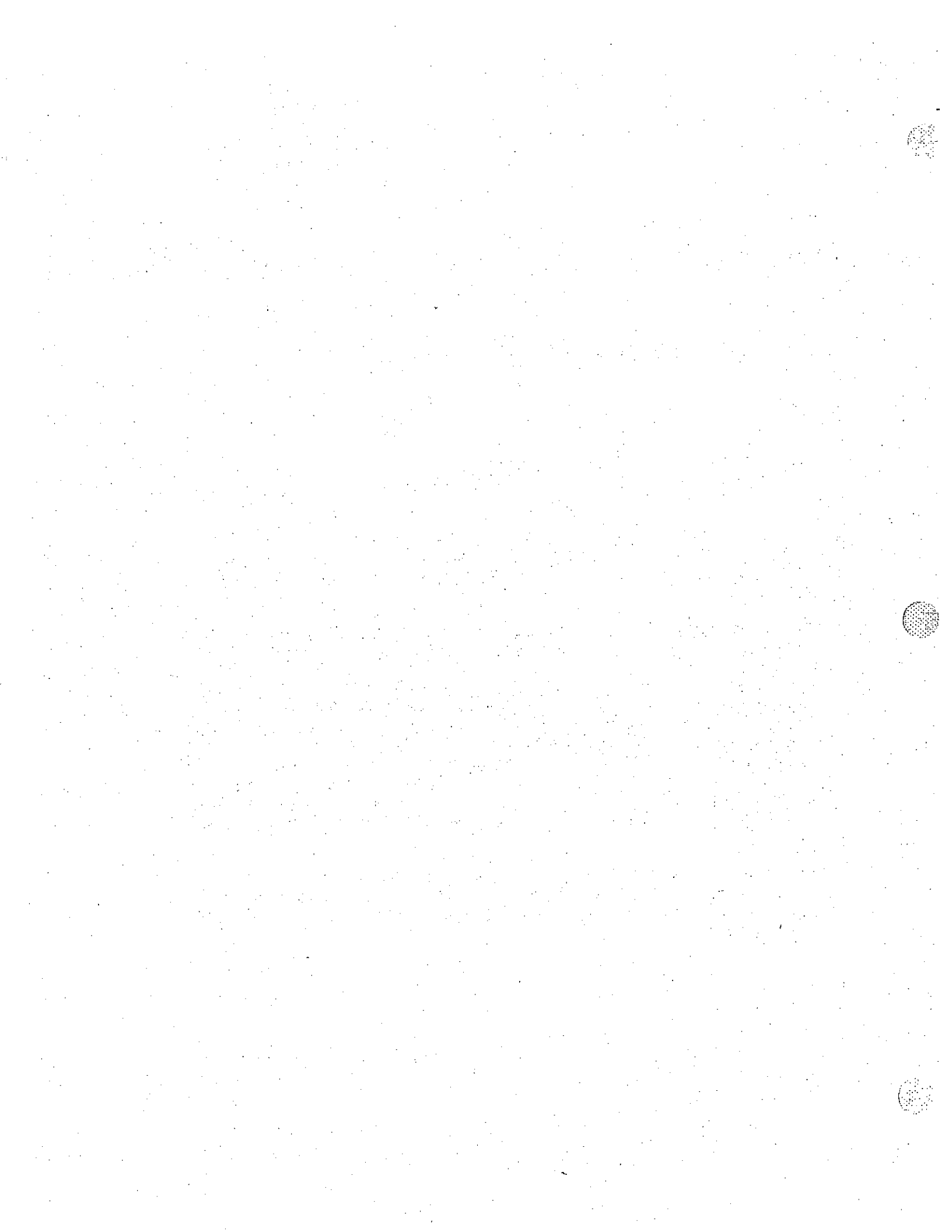
FROM: Roberta Young, Hearings Officer

SUBJECT: Hearing Officer Report - Public Hearing on Proposed
State Agency Coordination Rules

On July 17, 1990 a public hearing was held in Portland on the proposed State Agency Coordination Rules. Two individuals attended the hearing.

Ken Brody testified for himself and on behalf of Oregonians in Action. Ken stated that DEQ's State Agency Coordination Program is a lucid, comprehensive document which seems to address the complex land use rules and programs very well. He commented that he understood that atmospheric discharges in wilderness areas (Division 30) and animal feeding operation (Division 51) procedures were not individually addressed, but provisions for permitting, review or approval was provided through other sections of the program document. He also understood that field burning provisions provide for the quantity and amount of burning rather than a permitting process as such.

Mike Byers, with the Department of Land Conservation and Development submitted written comments which are addressed in the Department Response to Testimony and Comments Report, Attachment F.



RESPONSE TO TESTIMONY RECEIVED JULY, 1990
ON PROPOSE STATE AGENCY COORDINATION RULES

Public Testimony

1. Mr. Ken Brody, 1313 SW Broadway, Portland, Oregon 97201

Mr. Brody testified for himself and on behalf of Oregonians for Action. Mr. Brody stated he understood the air quality visibility standards for wilderness areas and the confined animal feeding operation standards are addressed in the permitting process. Secondly, he understood that field burning authorities involve the registration of acreage to be burned and establishment of limitations on burning, rather than regulation through a permitting process.

Department Response: Both of Mr. Brody's statements are correct. The air containment and water quality discharge permitting procedure addresses these requirements. A permitting process does not apply to the regulation of field burning and these authorities have not been identified as land use related.

Submitted Written Testimony

2. Oregon Concrete & Aggregate Producers Association, Inc, 707 13th St. SE #115, Salem, Oregon 97301
and,
Associated General Contractors, Oregon-Columbia Chapter, 9450 SW Commerce Circle, Suite 200, Wilsonville, Oregon 97070

The Oregon Concrete and Aggregate Producers, Inc. and Associated General Contractors submitted identical comments (see Attachments 1 and 2) on three issues. Department staff met with OCAPA and AGC representatives and developed compromise language for each of the issues, except for the reference to funding and staffing limitations. It was agreed to leave this provision as is.

1. In the Purpose provision of Division 18, the statement "Notwithstanding possible land use effects, the Department is not responsible for local plan compatibility or goal compliance if the applicable statutory authority requires that the Department action be based exclusively on consideration of public health

or safety." appears to violate ORS 197.180 which requires all agencies to assure compliance with goals and compatibility with local plans unless "expressly exempt". p. A-1

Department Response: Compromise language follows:

Propose deletion of following statement in 340-18-000: Notwithstanding possible land use effects, the Department is not responsible for local plan compatibility or goal compliance if the applicable statutory authority requires that the Department actions be based exclusively on consideration of public health and safety.

Insert as second paragraph under 340-18-000: There are limited situations such as ones related to the Health Abatement Act and Threat to Drinking Water Act where the applicable statutes obligate the Department to make decisions based exclusively on environmental, public health and safety considerations, and nothing in this program is intended to affect these responsibilities.
p. A-1

In the State Agency Coordination Document, Section V - Cooperation and Technical Assistance to Local Government insert after the introductory paragraph as a new paragraph: With respect to Department programs that are technically not subject to land use such as those relating to the Health Abatement and Safe Drinking Water laws, the Department will provide local governments with requested information and technical assistance within its capabilities. p.52

2. The rule and program document contain statements to the effect that the Department will achieve goal compliance and plan compatibility to the "fullest degree possible", and that technical assistance and cooperation with local government will be provided with "Department funding and staffing capabilities." These are viewed as subjective standards and as such, fail to meet the objective requirement of ORS 197.180 for goal compliance and plan compatibility.

Department Response: Compromise language follows:

In 340-18-040 (1) and 340-18-050 (1) substitute fullest degree possible with extent required by law. p. A-3,4

3. Under the permitting procedure, the Department may require an applicant to provide a local government re-evaluation of the Land Use Compatibility Statement if the Department concludes that all issues may not have

been considered in the initial review. This would allow the Department to exceed its authority by second guessing local government and would be require DEQ to perform an analyses in areas in which it has insufficient expertise.

Department Response: Compromise language follows:

In 340-18-050 (2) (C) restate to read If the Department concludes a local government LUCS review and determination may not be legally sufficient, the Department may deny the permit application and provide notice to the applicant. In the alternative, when the applicant and local government express a willingness to reconsider the land use determination, the Department may hold the permit application in abeyance until the redetermination is made. p. A-4

3. Mike Byers, Department of Land Conservation and Development, 1175 Court Street NE, Salem, Oregon 97310

The Department of Land Conservation and Development (DLCD) submitted a list of questions, comments and recommendations on the proposed rule and document. (see Attachment 3) Department staff has met with DLCD staff to discuss appropriate changes in response to DLCD's concerns. The two agencies concur on all changes made in response to the written comments.

Key concerns of DLCD that require revision are identified below. Minor corrections or issues are not specifically addressed, however, as stated above have been addressed to the satisfaction of DLCD. Department response is indicated after each comment.

1. Should program document expand section which discusses goals that most directly relate to DEQ activities to include goals 16 and 19.

Response: Department concurs, appropriate sections were rewritten - p. ii, 3, 38.

2. Department should re-evaluate which programs are referenced in the goals.

Response: Department concurs, references for authorities identified in goals 16 and 19 were added - p. ii, 4, 23, 24

3. The document states that DEQ will not take action on a permit if a land use compatibility statement (lucs) is appealed after the lucs has been submitted unless stayed

by LUBA or court of law. Questions whether the lucs would be appealed or a local land use decision.

Response: Department legal counsel suggested that the lucs "or underlying land use decision" both be included, and to clarify that the process shall continue unless "LUBA or a court of law stays or invalidates a local action". p. iii,4,41

4. Recommends adding statement that some DEQ permits are listed in Division 31, the State Permit Consistency Rule, and that all have been identified as land use programs.

Response: Department concurs. p. iv, 44

5. Need clarification of the provision addressing notification to local government of rulemaking that affects land use.

Response: An earlier draft contained inconsistencies regarding this issue. The Department shall provide notice of new or amended rules to DLCD and the land use mailing list. p. A-6, v, 5, 44

6. Need to resolve which elements of the Air Quality State Implementation Plan (SIP) are land use programs.

Response: It is the Department's position that the land use related actions in the SIP have been identified as land use programs, consequently there is no need to also include the SIP as a land use program.

7. Reconsider whether the Airport Noise Abatement and Water Quality 401 Certification are in the correct sections in Figure 2.

Response: These actions are accurately identified. p. viii

8. Recommend that discussion on estuary planning be expanded and clarified.

Response: Department concurs. p. 38, 49

9. Consider if the North Albany Health Hazard Annexation Declaration attorney opinion should be discussed under the Exempt Program requirement.

Response: The Department agrees that the authorities under the Health Abatement Statute be identified as programs exempt from land use and addressed as such. p. ii, 40

10. Recommend that under the list of agencies that DEQ coordinates with, the Economic Development Department be added in reference to grants/loans for public wastewater treatment facilities.

Response: Department concurs. p. 58

11. Recommend expansion of discussion on the Department's role in the Oregon Coastal Management Program and Plan process.

Response: Department concurs. p. 21, 52, 53

4. Proposed Department revisions based on evaluation of comments received and related provisions:

12. Insert Commission in 340-18-000 as technical correction. p. A-1

13. Insert land use in 340-18-020 (8) as technical correction. p. A-2

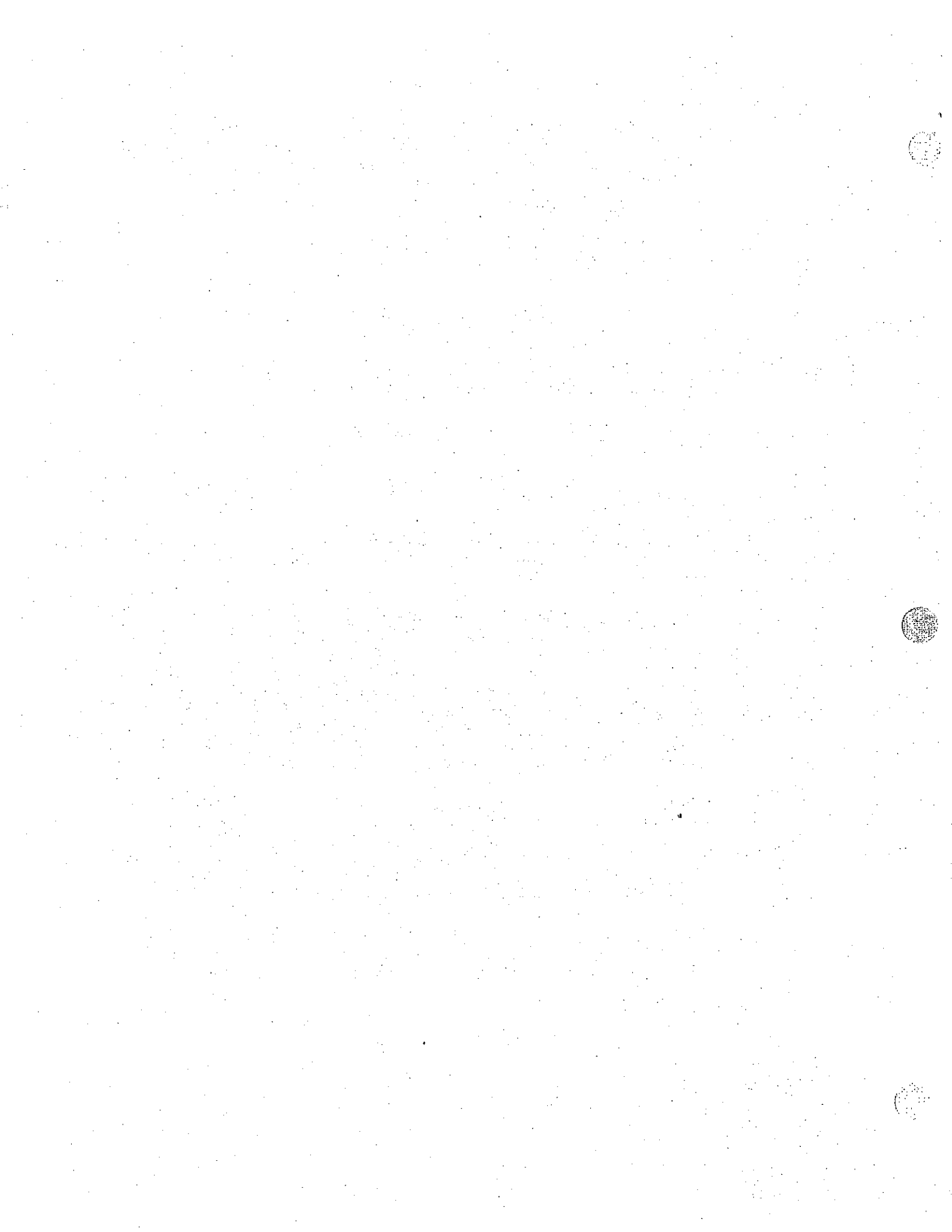
14. Restated action in 340-18-030 (1) (g), (h), and (i) to provide consistency between the document and rule. p. A-3

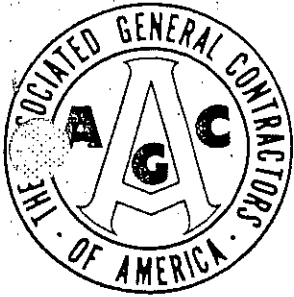
15. Add unless otherwise obligated by statute to 340-18-050 (2) (a) (B) for clarification purposes. p.A-4

16. Insert (E) A local government may withdraw or modify its compatibility determination any time prior to the issuance of a permit. under 340-18-050 (2) (a). This is to further clarify the Department's policy of relying on the local government's determination of the compliance of a permit with the local plan. p:A-4, 42

17. Insert substitute language for 340-18-050 (2) (a) (F): (G) If a LUCS is successfully appealed after the Department has issued a permit, the Department may either proceed to revoke or suspend the permit or may decide to wait until the land use appeal process is exhausted. for clarification purposes.

18. Re-insert paragraph addressing - Procedures for Other Actions Affecting Land Use in Executive Summary. this was inadvertently removed from the former draft. p. v





Associated General Contractors Oregon-Columbia Chapter

National AGC Award Winning Chapter

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July 17, 1990

Management Services Div.
Dept. of Environmental Quality
D E Q
JUL 18 1990

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Ms. Christie Nuttall
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97104-1390

Re: AGC Environmental Affairs Committee
Our File #6143-88

Dear Ms. Nuttall:

The Associated General Contractors, Columbia Chapter, and the Oregon Concrete & Aggregate Producers Association have reviewed your draft State Agency Coordination Rule, OAR Chapter 340 Division 18, and offer the following comments:

1. OAR 340-18-000 provides that the Department of Environmental Quality is not responsible for assuring compliance with the statewide planning goals or compatibility with acknowledged comprehensive plans to the extent that the statutory program requires the Department to be exclusively concerned with "public health and safety". This appears to violate ORS 197.180. ORS 197.180 requires all State agencies to "assure compliance with the goals and compatibility with acknowledged city and county comprehensive plans and land use regulations" unless the agency program is "expressly exempted by another statute from any of the requirements of * * * [197.180]." The DEQ State Agency Coordination Rules do not point to any such express exemption, and we have not been able to locate any. Accordingly, we conclude that this wholesale exemption from the state agency coordination requirements is invalid.

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Ms. Christine Nuttall
July 16, 1990
Page 2

2. In a number of instances, the SAC rules state that "coordination" will be provided to a degree that is not clearly defined, but is described as the "fullest degree possible", (OAR 340-18-040(7), 340-18-050(1)), or as an amount limited by DEQ's "funding and staffing capabilities" (OAR 340-18-200). It is not apparent to us how subjective standards like these can meet the requirements of ORS 197.180. ORS 197.180 appears to demand an objective fulfillment of an objective standard: compliance with the goals and compatibility with local adopted comprehensive plans.

3. OAR 340-18-050(2)(C) appears to allow the Department of Environmental Quality to second-guess the local government as to the adequacy and completeness of a land use compatibility statement (LUCS). This exceeds the Department of Environmental Quality's authority. This provision also requires DEQ to perform analyses in areas for which it does not have sufficient expertise.

4. OAR 340-18-200 provides that the Department of Environmental Quality will provide technical assistance to local governments only "within Department funding and staffing capabilities." We do not believe that this is sufficient. We also fear that this policy choice betrays a more general problem with the DEQ's SAC rules--namely, that they offer little to expedite, simplify and rationalize the permit process, and instead just throw up more regulatory roadblocks. This is not what state agency coordination was intended to accomplish. State agency coordination was intended to make land use work in Oregon by providing technical assistance to local governments early in the planning process.

Ms. Christine Nuttall
July 16, 1990
Page 3

Thank you for the opportunity to comment on the draft Rules. If you have any questions, we would be happy to discuss them with you.

Very truly yours,

LANE POWELL SPEARS LUBERSKY

Attorneys for
Associated General Contractors and
Oregon Concrete & Aggregate
Producers Association

cc: Richard L. Angstrom
Jack R. Kalonoski
Ray Phelps





707 1/2th St. SE #113
Salem, Oregon 97301
503-588-1400

July 17, 1990

Management Services Div.
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811 S.W. Sixth Avenue
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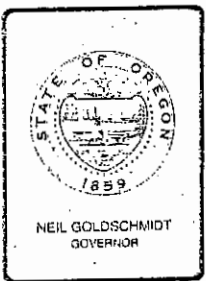
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Ms. Christine Nuttall
July 16, 1990
Page 2

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Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050 FAX 362-6705

**** INTER-OFFICE MEMORANDUM ****

July 17, 1990

TO: Roberta Young, Coordination Rule Hearings Officer
Department of Environmental Quality

FROM: Mike Byers, State Agency Coordination program

SUBJECT: July 17, 1990 hearing on draft State Agency
Coordination program and administrative rule

I have reviewed the June 11, 1990 draft of DEQ's Land Use Coordination Program and proposed administrative rule. Overall, I find the document and rule to be well thought out and meeting almost all of the criteria in the Land Conservation and Development Commission's coordination rule (OAR 660-30).

I do have some questions, comments, and recommendations on both the coordination document and the draft rule. They are attached to this memo and presented as written testimony for the July 17th hearing. These items are the same ones we discussed during our meeting on July 2nd and are submitted again so they are part of the hearing record.

Please call me if you or Michael Huston have additional questions on my written comments or want to meet to review certain points. I look forward to seeing the final draft.

<sac> DEQ#3.LTR



DLCD NOTES & COMMENTS ON 6/11 DRAFT
DEQ SAC PROGRAM AND RULE

EXECUTIVE SUMMARY

1. p.ii ¶3 5/23 draft included Goals 16 & 19 as two goals that most directly relate to DEQ activities; why were these goals deleted from the 6/11 draft?
2. p.ii ¶4 text here suggests that the only DEQ program referenced in the goals is non-point program (Goal 16 implementation measure.) DEQ programs specifically referenced in the Goals also include:
 - water quality permits (Goals 16 & 19)
 - sewage treatment/disposal (Goal 16)
 - oil spill regulation (Goal 19)

These additional goal references should be included in the executive summary and later in the text.
[See related item #16]

3. p.iii ¶1 5/23 draft states that it is DEQ's "policy to prepare goal compliance findings for all rule making determined to affect land use" and that notice of rule making is sent to all local governments.

These statements were deleted from 6/11 draft. Are they covered elsewhere?? [See related item #18]

4. p.iii ¶6 this revised wording is better as it makes it clear it will be the applicant not DEQ that may have to seek additional review by the city or county.
5. p.iii bottom do you intend the appeal to relate only to that specific LUCS action/form or does it include other local approvals as well?
6. p.iv 5/23 draft had a paragraph on "Procedures for Other Actions Affecting Land Use". Why was this paragraph dropped from the 6/11 draft?
- 6A. p.iv this is the only place that the permit compliance rule is mentioned. It would be helpful to add a paragraph in the summary indicating that some DEQ permits are listed in 660-31 and all such permits are included as DEQ land use programs. The existing ¶ would remain. [See related item #28A]
7. p.iv I like the changed/expanded exec. summary discussion of technical assistance to local governments.
8. p.v the last paragraph re: providing notice of rulemaking to local governments was deleted from the 6/11 draft. Why??

9. p.v Figure 1 (organization chart) is not in 6/11 draft.

10. p.vi I think the new Fig. 2 provides a good, quick summary of DEQ's compatibility procedures. I do have two observations:

A) for Airport Noise Abatement (Fig. 2,#2) you rely on 'written evidence' rather than the standard LUCS procedures (see p. 25). This makes me think it should be included under one of the other compatibility procedures.

B) for Certification of WQ Standards (Fig. 2,#17) you use the "deeming" approach (see p. 26), so this should not be listed under the LUCS compatibility mechanism. [See related items # 24,31,35]

MAIN TEXT

11. p.6 ¶3 it was a good idea to add the sentence at end of SIP paragraph regarding implementation of land use portion.

12. p.6-7 the new discussion of coordination with DOF for slash burning and DOA for field burning is helpful.

13. p.7 the 5/23 draft had a second paragraph under the Site Assessment section. Why was this deleted from 6/11 draft?

14. p.20 under non-point discussion in 5/23 draft there was a second paragraph re: federal research \$\$\$. Why was this deleted from 6/11 draft??

15. p.21 the 5/23 draft had a paragraph re: DEQ's participation in the OCMP process. This paragraph needs to be added back in to the 6/11 draft. [See also item #37]

16. p.23 ¶4 the paragraph under "Programs Referenced in the Goals" includes new material that was not in the 5/23 draft. This new wording is helpful. However, the longer and necessary discussion in the 5/13 draft of DEQ activities specifically referenced in Goals 16 & 19 has been deleted.

The last three paragraphs on page 23 of the 5/23 draft need to be added back in to the discussion under Programs Referenced in the Goals.

17. p.23 the revised text under "...Significant Effects" gives a cleaner explanation of the two additional DEQ guidelines. In the 6/11 draft the second guideline is 'softer' than in the 5/23 draft; was this change recommended by legal counsel??
18. pp.23-28 each program compatibility description in the 5/23 draft had a short paragraph re: rulemaking notice to cities and counties. That paragraph has been deleted from 6/11 draft. Is it covered elsewhere in the text or rule??
19. p.27 ¶1 the sentence "A permit will not be issued without an affirmative LUCS." has been deleted from the 6/11 draft. If this mean that DEQ might issue a permit without an affirmative LUCS then you need to describe how DEQ will achieve plan compatibility and comply with the goals.
20. p.27 ¶6 same as item #19
21. p.29 ¶1 this new paragraph is helpful.
22. p.34 ¶6 same as item #19
23. p.35 ¶7 this new paragraph provides a useful explanation of how compatibility will be achieved.
24. p.36 ¶2 the compatibility mechanism for this program has changed from the 5/23 draft in two ways: (A) the reference to DSL as the lead agency is gone; and (B) it has been replaced with a "deeming" approach. This is O.K. but the deeming approach also needs to be covered under the compatibility discussion in Section IV. [See related item #35]
25. pp.36-37 the new paragraphs on the Groundwater Management program and compatibility process better describe the relationship between DEQ and SWMG.
26. p.38 ¶5 the compatibility mechanism for estuary plans now includes the "deeming" approach in the 6/11 draft. How will DEQ's estuary plan affect local govts?? Will it be advisory? Mandatory?? [See related item #35]
27. p.38 under the Regulation of Oil Spill the 5/23 draft had additional reference to Goal 19. This was deleted from the 6/11 draft. The Goal 19 reference should be put back into the 6/11 draft.

28. p.38 the "deeming" compatibility mechanism has been added to the Regulation of Oil Spill land use program. As noted before, until we receive different direction, we feel this is an acceptable compatibility mechanism for large scale programs. See item #35
- 28A. p. 38 my comments on the 5/23 draft included a recommendation that a brief discussion/list of Programs subject to the LCDC Permit Consistency Rule, be added to this section of the document. This is a requirement of 660-30 and I repeat this recommendation for the 6/11 draft.
- An alternative is to have a sentence under each of the six Class A and B permit programs in Section III that states that "this activity is listed as a Class A (B) permit under OAR 660-31-012."
- 28B. p.38 my comments on the 5/23 draft recommended a short paragraph or discussion of any DEQ programs that may be considered EXEMPT LAND USE PROGRAMS. A discussion under this heading is needed and must be consistent with the A.G.'s letter of opinion (OP-6326) to Lydia Taylor re: the North Albany health hazard declaration.
29. p.40 the 5/23 draft had a big paragraph here indicating that DEQ's rulemaking procedures require a goal review as part of its policy for assuring goal compliance with significant land use programs. This paragraph was deleted from the 6/11 draft and thus suggests a change in DEQ policy and procedures; is this true??
30. p.40-44 I think this is a very good presentation of the different mechanisms DEQ needs to use to show compatibility, and a good addition in the 6/11 draft. I do have some specific suggestions below.
31. p.40 it seems to me that two programs listed under the LUCS discussion don't really rely on the local land use compatibility statement. The Approval of Airport Abatement Plan (LUP #2) uses the 'written evidence' test and the Certification of Water Quality Standards for Federal Permits (LUP #20) uses the 'deeming' approach.
- these two programs should be re-listed under other compatibility mechanisms.
32. p.41 for subsections (a), (b), and (d) where the text says 'comprehensive plan' I suggest you change it to read "comprehensive plan and/or land use regulations".

33. p.41 (f) this is similar to item #5 above. The reference to the LUCS being appealed confuses me; I would think that this could only happen when the action is permitted outright in the plan/code without standards. Isn't DEQ more concerned about appeals of a local decision rather than appeals of the LUC statement?

Also, a minor edit: Court should read Board.

34. p.43 as noted above, I feel the 6/11 draft benefits from this discussion of other compatibility procedures. I have a few comments/suggestions:

the Parking and Traffic Circulation Plan (LUP #6) and the Envir. Hazard Notice (LUP #8) are missing from the discussion on pp.40-43. I suggest putting the PTCF program under 3) 'written evidence', and including the Env. Hazard Notice under 4) 'Planning Activities'.

as noted above under item #10 above, I would also place the Airport Abatement Plan/Impact Boundary program under a 'written evidence' category such as 3).

35. p.43 I recommend you add a 5th procedure for the programs that use the "deeming" approach. Under this procedure I would include:

- Certification of WQ Standards (LUP #20);
- Estuary WQ Planning (LUP #23); and
- Development of Oil Spill Regs. (LUP #24).

36. pp46-48 the quick summary of programs and compatibility procedures is a nice addition to the 6/11 draft.

37. p. 52 there needs to be some discussion under this section on the Oregon Coastal Management Program and the Ocean Resources Management Plan. I've included sample wording on page 6 to cover these two.

38. pp.53-57 I note that several additions have been made to the list of agencies and their related program areas. I have one more addition under the Water Quality Division: ADD the Economic Development Department for grants/loans for public wastewater treatment facilities.

COORDINATION RULE 340-18

39. 18-000 I note the PURPOSE section has been expanded with the caveat of non-compliance if the Department has

statutory authority to exclusively consider public health and safety.

You probably want this to read "...requires that the Department's or Commission's actions be based..."

40. 18-040 the previous draft rule had a statement that prior to rulemaking the Department shall find that the proposed rule is in compliance with the statewide goals. This subsection has been deleted from the current 6/11 draft.

SUGGESTED ADDITION TO SECTION VI OF DEQ SAC PROGRAM

Oregon Coastal Management Program (OCMP)

The OCMP is part of Oregon's program for coordinated land use programs. The program is a partnership among local, state, and federal agencies to resolve general and often conflicting interests through comprehensive plans and land use regulations for all lands in Oregon's coastal zones. The OCMP is based upon specific resource management authorities contained in Oregon Revised Statutes. The Department's involvement is based on:

ORS Chapter 468: Application and administration of air and water pollution; oil spill regulations.

ORS Chapter 454: Application and administration of sewage treatment works.

The Department will participate with DLCD and other OCMP agencies, as resources permit, to develop and update a five-year strategic plan for Oregon's coastal zone.

Oregon Ocean Management Plan

The Department will continue to be an active participant in the ocean resources management process. Following adoption of the Oregon Ocean Management Plan by LCDC, the Department will consider incorporating into the appropriate Department rules and programs those aspects of the Ocean Plan which the Department has authority to implement.